

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: ECF CASE
STATE OF NEW YORK, STATE OF ILLINOIS, STATE OF
MARYLAND, STATE OF WASHINGTON, :
Plaintiffs, : 07-CV-8621 (PAC) (RLE)
: - against -
: **PLAINTIFFS’**
UNITED STATES DEPARTMENT OF HEALTH AND : **NOTICE OF MOTION**
HUMAN SERVICES, : **FOR PARTIAL SUMMARY**
: **JUDGMENT**
Defendant.
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PLEASE TAKE NOTICE that upon the Declarations of Cynthia R. Mann dated April 14, 2008, Judith Arnold dated April 10, 2008, Susan J. Tucker dated April 14, 2008, Roger Gantz dated April 14, 2008, and Kevin Cornell dated April 14, 2008, all with exhibits annexed thereto, and the accompanying Memorandum of Law and all the pleadings and proceedings heretofore had herein, the undersigned counsel for Plaintiffs will move this Court, at the United States Courthouse, 500 Pearl Street, Courtroom 20-C, New York , New York 10007, before the Honorable Paul A. Crotty, United States District Judge, for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure granting the following relief, on the ground that there is no genuine issue as to any material fact with respect to the claims indicated and Plaintiffs are entitled to judgment as a matter of law with respect thereto: (1) declaring that (a) the new “review strategy” mandated by defendant in the letter of its Centers for Medicare and Medicaid Services (CMS) to state health officials dated August 17, 2007, was legislative rulemaking by defendant subject to the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. § 553, and defendant’s own rulemaking policy, and (b) that in mandating the new

“review strategy,” defendant failed to comply with the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. § 553(b), and defendant’s rulemaking policy; (2) enjoining defendant (a) from disapproving any state child health plan or state plan amendment using the criteria stated in CMS’s August 17, 2007, letter, and (b) from giving effect to any disapproval of a state plan or plan amendment based on the criteria stated in CMS’s August 17, 2007, letter; (3) directing defendant to review such plans and amendments based solely on proper application of Title XXI and validly promulgated regulations; and (4) granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to Order of the Court, responsive papers, if any, shall be served on or before May 9, 2008.

Dated: New York, New York
April 16, 2008

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